



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

**APPLICATION FOR CERTIFICATION FOR THE
CARLSBAD ENERGY CENTER PROJECT**

DOCKET No. 07-AFC-6

**COMMITTEE ORDER DENYING CITY OF CARLSBAD MOTION FOR STAFF REVISED
PRELIMINARY STAFF ASSESSMENT AND PROJECT SCHEDULE RELIEF**

On January 20, 2009, intervenor City of Carlsbad ("City") filed a Motion for Staff Revised PSA (Preliminary Staff Assessment) and Project Schedule Relief ("Motion"). Responses in support of the Motion were filed by intervenors California Unions for Reliable Energy (CURE) and Power of Vision. Responses opposing the Motion were filed by Commission staff and the Applicant, Carlsbad Energy Center LLC.

In its Motion, City argues that unresolved issues regarding the interrelation between the Carlsbad Energy Center Project (CECP) and a Caltrans project to widen Interstate 5 (I-5) on the eastern boundary of the CECP site, require the preparation of a revised PSA and further public review of that revised PSA prior to the preparation of a Final Staff Assessment (FSA). Without such an opportunity, it asserts, the public will not have "meaningful input into the Commission staff position."

Intervenor CURE argues in support of the Motion that the PSA is the equivalent of a Draft Environmental Impact Report (DEIR) and must contain a complete air quality analysis; where the analysis is incomplete, the document must be revised and recirculated. CURE further complains that a Coastal Commission report on the project, which it believes is mandated by Public Resources Code section 30413, must be provided despite the Coastal Commission's refusal to do so.

Commission Staff urges denial of the motion. It asserts that the PSA has taken into account, to the extent of the information available, the I-5 widening project and a further refined analysis will be presented in the Final Staff Assessment (FSA). In any event, it asserts that a PSA is an "'extra credit' exercise to provide early and additional public access to agency analysis as that analysis is being developed. . .this agency does not always prepare a PSA as part of its project analysis. When it does so, it is quite common for certain information presented to be incomplete, and to include unresolved issues." As a certified regulatory program, the Energy Commission is not required to prepare a DEIR.

Similarly, the Applicant asserts that the PSA has gone as far as it can in its analysis given the incomplete details available about the Caltrans project. Applicant agrees with Staff that preparation of a PSA is not mandatory. In its view, the City and public have had substantial time since the Application for Certification was found data adequate in October 2007 in which to review the proposal.

The nature of the “schedule relief” the City is requesting is not clear. It appears to suggest that the revised PSA it seeks stand in the place of the FSA, with the prehearing conference the schedule shows following the FSA instead following the PSA. It says doing so would add “negligible” time to the schedule. Given that Staff plans to hold an FSA workshop at which the public can participate, we have difficulty finding any substantive difference between the scenario the City seeks and the status quo. In either case, a revised report of the Staff’s position will be made available and subjected to public review prior to the evidentiary hearings.

After considering the arguments, we do not find it necessary or appropriate to direct the preparation of a revised PSA. As Staff notes, a PSA is not a required element of our process. It is the FSA that will be considered, along with other evidence provided by the Applicant, intervenors, and public comment at the evidentiary hearings before us. The FSA provides the Staff’s best professional judgment of the issues; the City or any other party which disagrees with Staff, may present its own expert evidence supporting its position. Staff is also free to supplement the FSA with additional or amended testimony. Its opinions regarding the project are not irrevocably fixed by the publication of the FSA.

We also agree with Staff and Applicant that the California Environmental Quality Act does not require either the preparation of a PSA or recirculation of a PSA where significant new information is added.

The Coastal Commission’s participation, or rather its lack of participation, is raised not in the Motion but in CURE’s supporting pleadings and is not addressed by the other parties. Lacking final analysis from Staff or testimony from the other parties, it is premature to address the issue at this juncture. The parties are free to raise it at a later time, such as the evidentiary hearings (after identifying it as an issue in a prehearing conference statement, of course).

THEREFORE, the Committee **ORDERS** that the Motion is **DENIED**.

Dated: February 9, 2009, at Sacramento, California.

Original signed by:
JAMES D. BOYD
Vice Chair and Presiding Member
Carlsbad AFC Committee

Original signed by:
KAREN DOUGLAS
Commissioner and Associate Member
Carlsbad AFC Committee